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No. 88-672

In The

Supreme Court of the United States

October Term, 1988

TRIANGLE INDUSTRIES, INC., successor in interest to CENTRAL JERSEY INDUSTRIES, INC.,

Petitioner,

v.

STANLEY ZULKOWSKI, SR. and CLARA RUTH ZULKOWSKI, CONSOLIDATED RAIL CORPORATION, GARLOCK, INC., CERTAIN-TEED CORPORATION, RAYMARK INDUSTRIES, INC., a/k/a Raybestos-Manhattan, Inc., CELOTEX CORPORATION, and ARMSTRONG WORLD INDUSTRIES,

Respondents.

REPLY BRIEF OF TRIANGLE INDUSTRIES, INC. IN SUPPORT OF ITS PETITION FOR A WRIT OF CERTIORARI

Stanley Weiss*
Thomas J. Lennon
Carpenter, Bennett & Morrissey
Three Gateway Center
100 Mulberry Street
Newark, New Jersey 07102
(201) 622-7711

Attorneys for Petitioner Triangle Industries, Inc.

*Counsel of Record

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

TABLE OF AUTHORITIES

Page

Regional Rail Reorganization Act Cases, 419 U.S. 102 (1974) 2

Schweitzer v. Consolidated Rail Corp., 65 Bankr. 794 (E.D.Pa. 1986) 2

In the Matter of Penn Central Transportation Company, 384 F. Supp. 895 (Sp. Ct. RRRA 1974) 3

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Triangle Industries, Inc. (CJI), successor in interest to Central Jersey Industries, Inc., submits this Reply Brief in response to the brief of respondents in opposition to CJI's petition for a writ of certiorari.

ARGUMENT

Respondents' claim in the section of their brief in opposition entitled "REASONS FOR DENYING THE PETITION" that CJI failed to raise before the Court of Appeals the controlling impact of *Regional Rail Reorganization Act Cases*, 419 U.S. 102 (1974), on the issue presented, stating at page 9 of their brief:

> As noted above, CJI never mentioned in the court of appeals the "conflict" it now asserts exists between the district court ruling affirmed by the court of appeals and this Court's Rail Act opinion.

The principal argument of CJI's opening brief in the Court of Appeals was that the issue presented was controlled by the fact that the Rail Act established a reorganization process which led to the emergence of Consolidated Rail Corporation (Conrail) as the reorganized company; and the opinion in *Regional Rail Reorganization Act Cases* was relied upon as a principal authority to support this characterization of what had occurred under the Rail Act. CJI's reply brief in the Court of Appeals, in rebutting the opinion of Judge Ditter, in *Schweitzer v. Consolidated Rail Corp.*, 65 Bankr. 794 (E.D.Pa. 1986), adopted by the District Court below, specifically stated at page 7:

> Most important, the opinion fails to reconcile its own approach towards Conrail and that process with the clearly conflicting approach adopted by the United States Supreme Court in *Regional Rail Reorganization Cases*, 419 U.S. 102 (1973) and by the Special Court in *In the Matter of Penn Central Transportation Company*, 384 F. Supp. 895 (Spec. Ct. RRRA, 1974). The fact is that the parties involved in the creation of Conrail argued for years as to whether

> the process set forth in the Rail Act should be viewed as a bankruptcy reorganization; and it was ultimately determined that it should be. See also *Matter of Val. Pro. Etc. Reg. Rail Reorg.*, 445 F. Supp. 994, 1000-1001 (Spec. Ct. RRRA, 1977).

Finally, at oral argument in the Court of Appeals, CJI's counsel stated at page 13 of the transcript:

> This was a reorganization. And it seems to me that to approach this matter without recognizing that Conrail is the real organized (sic.) company is to just turn your back on all of the legislative history on the language of the statute, on what the Supreme Court has said about it and what the special court has said about it. That fact (sic.) has been turned a number of times in the past.
>
> I think that you cannot do justice to the issue that is before you unless you come face-to-face with and confront this basic statutory scheme.

The truth is not that CJI failed to raise the argument below but that neither of the lower courts nor respondents have ever come to grips with it. It is plain that Conrail was intended to be the reorganized company, and that this Court so regarded it in its opinion in *Regional Rail Reorganization Act Cases* which led to the compelled reorganization of CJI and others under the Rail Act against their will. *In the Matter of Penn Central Transportation Company,* 384 F. Supp. 895, 951 n. 115, 954 (Sp. Ct. RRRA 1974). The Third Circuit, sidetracked by its own misconception as to the compensation scheme of the Rail Act, ignored this Court's opinion. Respondents also ignored such opinion below and, in their brief in opposition here, continue to disregard its controlling import when they argue that CJI, and not Conrail, is *the* reorganized company

bearing responsibility for claims of Conrail's rail employees which were inchoate at the time of the reorganization.

The Supreme Court should grant certiorari to correct the injustice resulting from the fact that its earlier opinion, which was the primary basis for compelling the reorganization, is now being disregarded when certain of the implications of the reorganization have been brought into focus.

Respectfully submitted,

STANLEY WEISS
CARPENTER, BENNETT & MORRISSEY
Attorneys for Petitioner,
Triangle Industries, Inc.

Three Gateway Center
100 Mulberry Street
Newark, New Jersey 07102
(201) 622-7711

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